

## § 240.15d-5

## 17 CFR Ch. II (4-1-02 Edition)

### § 240.15d-5 Reporting by successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of any issuer that is not required to file reports pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Act are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to such section shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall, after the consummation of the succession, file reports in accordance with section 15(d) of the Act (15 U.S.C. 78o(d)) and the rules and regulations thereunder, unless that issuer is exempt from filing such reports or the duty to file such reports is suspended under section 15(d) of the Act (15 U.S.C. 78o(d)).

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20-F (§ 240.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20-F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F-8 (§ 239.38 of this chapter), Form F-10 and Form 10-SB (§ 239.40 of this chapter) or Form F-80 (§ 239.41 of this chapter).

[36 FR 3805, Feb. 27, 1971, as amended at 48 FR 46740, Oct. 14, 1983; 56 FR 30075, July 1, 1991; 62 FR 39768, July 24, 1997]

### § 240.15d-6 Suspension of duty to file reports.

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first fiscal year, file a notice on Form 15 informing the Commission of such suspension unless Form 15 has already been filed pursuant to Rule 12h-3. If the suspension resulted from the issuer's merger into, or

consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78l(g)(4), 78l(h), 78m(a), 78o(d), 78w(a))

[49 FR 12690, Mar. 30, 1984]

### OTHER REPORTS

### § 240.15d-10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year; *Provided, however*, that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) The report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards.

Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10-Q and Form 10-QSB (§249.308a of this chapter) not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10-Q and Form 10-QSB shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10-Q and Form 10-QSB.

(d) Notwithstanding the foregoing in paragraphs (a), (b), and (c) of this section, if the transition period covers a period of one month or less, the issuer need not file a separate transition report if either:

(1) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is an annual report, and that report covers the transition period as well as the fiscal year; or

(2)(i) The issuer files with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period; and

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the de-

termination to change the fiscal year end is a quarterly report on Form 10-Q and Form 10-QSB; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10-Q and Form 10-QSB for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10-Q and Form 10-QSB pursuant to §240.15d-13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10-Q and Form 10-QSB within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10-Q and Form 10-QSB within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10-Q and Form 10-QSB for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which

the issuer determined to change the fiscal year end; and

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10-K and Form 10-KSB for the newly adopted fiscal year, include in the initial quarterly report on Form 10-Q and Form 10-QSB for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10-Q and Form 10-QSB or annual report on Form 10-K and Form 10-KSB for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

NOTE TO PARAGRAPHS (c) AND (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10-Q and Form 10-QSB or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed

for the transition period on Form 10-Q and Form 10-QSB not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of six or fewer months, in lieu of the report required by paragraph (g)(3) of this section, a report for the transition period may be filed on Form 20-F responding to Items 5, 8.A.7., 13, 14, and 17 or 18 within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S-X (§ 210.10-01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report

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for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period.

(5) Notwithstanding the foregoing in paragraphs (g)(2), (g)(3), and (g)(4) of this section, if the transition period covers a period of one month or less, a foreign private issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(h) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1-1 (§270.30b1-1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(i) No filing fee shall be required for a transition report filed pursuant to this section.

NOTE: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1-1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8-K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

[54 FR 10318, Mar. 13, 1989, as amended at 56 FR 30075, July 1, 1991; 64 FR 53912, Oct. 5, 1999]

### § 240.15d-11 Current reports on Form 8-K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to §240.15d-1 shall file a current report on Form 8-K within the period specified in that form unless substantially the same information as that required by Form 8-K has been previously reported by the registrant.

(b) This rule shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to Rule 15d-16 (17 CFR 240.15d-16), issuers of American depository receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to Rule 30b1-1 (17

CFR 270.30b1-1) under the investment Company Act of 1940.

(Sec. 5, 78 Stat. 569, 574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 (15 U.S.C. 78n(a), secs. 20(a), 38(a)), 54 Stat. 822, 841 (15 U.S.C. 80a-20(a), 80a-37(a)))

[42 FR 4429, Jan. 25, 1977, as amended at 50 FR 27939, July 9, 1985]

### § 240.15d-13 Quarterly reports on Form 10-Q and Form 10-QSB (§ 249.308a and § 249.308b of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 on Form 10-K and Form 10-KSB (§249.310 of this chapter) or U5S (§259.5s of this chapter) shall file a quarterly report on Form 10-Q and Form 10-QSB (§249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S-X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10-Q and Form 10-QSB as of its last fiscal quarter, whichever is later.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file reports pursuant to §270.30b1-1;

(2) Foreign private issuers required to file reports pursuant to §240.15d-16.